



Appeal Decision

Site visit made on 17 January 2025

by **David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 April 2025

Appeal Ref: APP/X2410/W/24/3349060

132 Hallfields Lane, Rothley, Leicestershire LE7 7NG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Think 123 Limited against the decision of Charnwood Borough Council.
 - The application Ref is P/24/0320/2.
 - The development proposed is Demolition of existing dwelling and associated buildings including removal of trees. Erection of 3 new dwellings including access and parking arrangements.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Government has published its Housing Delivery Test (HDT) results alongside the publication of a revised National Planning Policy Framework (the Framework) in December 2024. Both main parties were given the opportunity to comment on any relevant implications for the appeal. I have had regard to the comments made in reaching my decision, including the Council's evidence that it can demonstrate a housing land supply in excess of 5 years, although it is required to prepare an Action Plan in accordance with the HDT.
3. The Council's decision refers to policies of the emerging Charnwood Local Plan 2012-37 (the Emerging Local Plan). Following the submission of the Council's Statement of Case, the response to public consultation on main modifications has been published. In the Second Addendum to its Statement the Council considers that the policies referred to in its decision can be given significant weight. Based on the evidence before me, I give significant weight to the policies of the Emerging Local Plan referred to in the Council's reasons for refusal in accordance with Paragraph 49 of the Framework.
4. Subsequent to the submission of the appeal, the appellant has provided further evidence including a Nocturnal Bat Survey Report (the Bat Survey). The submission of this further evidence was accepted by the Inspectorate as part of the appeal submissions. The Council has undertaken further consultation on the evidence and submitted further comments, which I have had regard to.

Main Issues

5. The main issues are the effect of the proposal on:
 - Trees;
 - Biodiversity and protected species;

- Housing mix; and
- The character and appearance of the area, with due regard to the effect on the Rothley Conservation Area.

Reasons

Trees

6. The proposal consists of the provision of dwellings within a site which contains trees covered by a Tree Preservation Order (TPO) and which are within the Rothley Conservation Area (CA). The dwellings would be located in close proximity to a number of the trees which are proposed for retention, and the Council has expressed concern about the relationship between the dwellings and the trees and pressure for future works to the trees or their removal.
7. Whilst future residents would be aware of the position of the trees, the implications of living next to them could not be fully appreciated until occupation. I consider that this would raise undue pressure in the future for works to the tree canopies or potential removal of trees. Similarly, concerns about root damage would also be likely to increase pressure for the removal of trees. Although works to protected trees would be subject to consent from the Council, given the potential effect on the living conditions of residents and damage to buildings such works would be difficult to resist. In turn this may lead to significant works to the trees, with subsequent harm to the contribution that these trees make to the character and appearance of the area.
8. The appellant refers to a Tree Shading Plan, but the Council states that it has not been provided with this and that it has not been submitted as part of the appeal. The Council has provided a commentary on the amount of shading from trees, including the effect on plot 3 and on south facing windows. Based on what I have seen and read, the Council's contention that trees and the associated understory would reduce lighting levels inside most habitable rooms on most days of the year is well-founded. This would lead to a dark and oppressive environment for residents of the site, with subsequent harm to their living conditions.
9. The Council refers to the loss of trees and vegetation to create the access to the site, and emphasises the contribution of a continuous line of trees along Hallfields Lane to the streetscape and the CA. However, at the time of my visit, the trees and vegetation had been cut back as part of works within the public highway. Although a line of mature trees remained, the contribution of the trees and vegetation highlighted by the Council had been substantially diminished. Within this context, I do not consider that the effects of the proposed access on trees and vegetation would be sufficient to withhold planning permission.
10. There is conflicting evidence about the scale and form of compensatory planting for trees which are identified for removal. However, given the extent of the site I consider that it would be possible to address this by condition as there are suitable areas within the site where planting of equivalent value could be provided.
11. Reference has also been made to the proximity of retained trees to development works. However, this could be addressed through conditions requiring details to be approved for the protection of trees during the construction process.

12. Notwithstanding my conclusions on compensatory planting, the effect of the access and construction works, I conclude that the proposed development would place long-term pressure for the removal or significant works to trees with subsequent unacceptable harm to their amenity and biodiversity value. The proposal would therefore conflict with Policies CS2 and CS13 of the Charnwood Local Plan Core Strategy 2015 (the Core Strategy), Policy RO1 of the Rothley Parish Neighbourhood Plan 2021 (the Neighbourhood Plan), and Policy EV6 of the Emerging Local Plan in respect of the retention of trees as well as harm to the landscape and biodiversity. The proposal would also be contrary to the Framework with regard to conserving and enhancing the natural environment.

Biodiversity and Protected Species

13. Policy CS13 of the Core Strategy sets out that developments will be supported which protect biodiversity. Given the habitats within the site, as well as the relationship with Rothley Brook, the appeal site will have material biodiversity value both in its own terms and as part of the wider habitat value of the landscape including the Brook and nearby meadows. The appellant has submitted evidence including a Preliminary Ecological Appraisal (PEA) and a Biodiversity Net Gain Assessment (BNGA) which identifies habitats that would be retained or lost as part of the proposal as well as on-site habitat creation to offset that loss.
14. However, in its Statement of Case, the Council has raised detailed concerns on the appellant's evidence; including the site baseline, the description of post-development habitats, area calculations, the relationship with private gardens, and the relationship with the Brook. The appellant has not addressed these concerns. Based on the evidence before me neither the PEA nor the BNGA provide a robust demonstration that the proposal would not result in a net loss of biodiversity. My previous conclusions in respect of the effect of the proposal on trees within the site add to my concerns on this issue.
15. The Bat Survey provided by the appellant is limited to the existing buildings. This identifies bat roosts in the existing dwelling, but the Council's Principal Ecologist is content that the loss of these roosts could be mitigated on site. However, the Ecologist sets out that Bat Survey does not address potential bat roosts in tree T13 which is proposed for removal. The Bat Survey has therefore not established the presence or otherwise of protected species and the extent that they may be affected by the proposed development. Reference is also made to lighting mitigation measures in respect of bats, but these are set out in relatively general terms, and given the design and residential use of the proposal it has not been demonstrated that such mitigation measures would be effective.
16. The appellant submits that these matters could be addressed by suitably worded conditions. But, due to the concerns in relation to the appellants evidence, it has not been demonstrated that such conditions would successfully mitigate potential harm to biodiversity and protected species.
17. I therefore conclude that the evidence provided by the appellant in respect of biodiversity and protected species, in particular bats, is not suitably robust. It has therefore not been demonstrated that the proposal would comply with Policies CS2 and CS13 of the Core Strategy, and EV6 of the Emerging Local Plan with regards to biodiversity and protected species. It has also not been demonstrated that the

proposal would comply with the Framework with regards to conserving and enhancing the natural environment.

Housing Mix

18. Policy RO1 of the Neighbourhood Plan supports development which includes smaller dwellings suitable for young families or to enable downsizing. Policy CS3 of the Core Strategy refers to seeking an appropriate mix of homes having regard to identified housing needs.
19. Policy H1 of the Emerging Local Plan also seeks a mixture of house types, tenures and sizes to meet the needs of the Borough based on up to date evidence. The supporting text for this Policy refers to a mix of market dwellings largely split between 2 and 3-bedroom dwellings, as well as a small need for 4-bedroom dwellings reflecting a lack of turnover in larger dwellings and the number of larger households.
20. The Council's Officer Recommendation Report refers to the Leicestershire Housing and Economic Needs Assessment 2022 (HENA) and sets out that the HENA identifies a mix consisting of 75% of dwellings needed in the 2 to 3-bedroom range, with only 20% of new housing in excess of 4 bedrooms.
21. The existing dwelling on the site would be demolished, with a net increase of 2 dwellings resulting from the appeal proposal. All of the new dwellings would have more than 4 bedrooms and the development would therefore not reflect the mix of housing identified in the HENA.
22. The appellant contends that the appropriate dwelling mix should be secured through the site allocation process rather than windfall sites such as the appeal proposal. However, even allowing for the small number of dwellings proposed, windfall sites can still contribute to the mix of housing, even if this would only be to a limited degree in respect of the appeal proposal.
23. Although the appellant refers to site constraints, these do not demonstrate that the mix of housing cannot be provided in accordance with the needs of the area. The viability of the development is also referred to, although there is no substantive evidence that a policy compliant housing mix would be economically unviable.
24. I therefore conclude that the proposal would not provide an appropriate mix of housing that reflects the identified needs of the area. The proposal would therefore conflict with Policy C3 of the Core Strategy, Policy RO1 of the Neighbourhood Plan, and Policy H1 of the Emerging Local Plan, with due regard to the evidence of the HENA. Although there may be some flexibility in the interpretation of housing mix policies, there is no substantive evidence that such a flexible approach is appropriate in this case.

Character and Appearance

25. The existing site consists of a large dwelling set in a large garden which contains a significant number of trees. The appeal site is within the CA where the majority of surviving buildings are timber framed and date from the 16th to the 19th Centuries when Rothley was a popular coaching stop. However, the appeal site is located in part of the CA associated with Rothley Brook and nearby meadowlands, which contribute to the rural setting of the CA and its importance as a designated heritage asset.

26. Although the extant building on the site is of some architectural merit, it is a relatively modern building of no great architectural and historic significance. The inclusion of the site within the CA would appear to be due to its verdant character and contribution to the landscaped setting. Rather than the clusters of built development within the CA, the appeal site is more closely associated with relatively modern suburban development outwith the CA. On that basis, the loss of the existing dwelling would not be harmful to the CA.
27. The Council refers to the configuration of the proposal which it considers to be disjointed and inconsistent with the local settlement pattern, including in relation to properties on Hallfields Lane where frontages are aligned and set back from the road. However, the site is of a self-contained character, and the existing dwelling and the dwelling on an adjoining site accessed from Hallfields Lane do not reflect the more uniform arrangement of dwellings on the opposite side of the streetscape. Given that context, there is some flexibility as to the layout of the site and I consider that the character and appearance of the general layout of the scheme is appropriate.
28. However, there are detailed elements of the proposal which are of concern.
29. The offshoot to the dwelling on plot 3 containing garages and rooms above would be grossly disproportionate in comparison to the main dwelling. The clumsy and excessive first floor glazing feature would be an incongruous feature, and the 3-bay garage would add to the unfortunate appearance, even allowing for potential changes to the design of the garage doors. A lower eaves line and a stepped ridge of the linking element of the dwelling would do little to mitigate for its awkward design.
30. The detached garages on plots 1 and 2 would also be of an excessive scale in comparison to the main dwellings and would be over-prominent features within the site. Although the ridge and eaves line of the garages would be lower than the main dwellings, this would not be sufficient to mitigate their excessive scale in views from Hallfields Lane.
31. The trees and other planting within and around the site would give a degree of screening of the development. However, I consider that the development would still be visible from the surrounding area, particularly when the trees are not in leaf.
32. My conclusions on the effect of the proposal on trees add to my concerns on this issue, as the potentially harmful effect on trees within the site would exacerbate the harm to character and appearance
33. In conclusion on this issue, due to its design and effect on trees, the proposal would lead to significant harm to the character and appearance of the area. The proposal would also fail to preserve or enhance the character and appearance of the CA. Whilst the harm to the significance of the CA would be less than substantial, I attach great weight to the conservation of this designated heritage asset. The proposal would add to the supply and mix of housing in the area, but given the number of dwellings and my previous conclusions on housing mix these benefits would be very limited. There are no public or other benefits that would outweigh the identified harm to this heritage asset.
34. The proposal would therefore be contrary to the design and heritage requirements of Policy EV/1 of the Borough of Charnwood Local Plan 2004, Policies CS2 and

CS14 of the Core Strategy, Policies RO1, RO3 and R13 of the Neighbourhood Plan, and Policies DS5 and EV8 of the Emerging Local Plan.

Conclusion

35. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be dismissed.

David Cross

INSPECTOR